

7018

DECISION



79. 2nd Bureau, P12

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191212

DATE: July 14, 1978

MATTER OF: Honeywell Information Systems, Inc.

DIGEST:

Where proposed tape systems comply with mandatory performance requirements but are rejected for noncompliance with requirement for newly designed, latest state-of-the-art tape systems within offeror's product line, protest is denied on grounds that such state-of-the-art requirement reflects agency's minimum needs and provides common basis for submission of proposals.

Honeywell Information Systems, Inc. (Honeywell) protests rejection of its initial and subsequent alternate proposals submitted to the Internal Revenue Service (IRS) in response to Request for Proposals (RFP) No. 78-12.

The RFP calls for offers to provide 12 nine-track magnetic tape subsystems to be attached to installed Honeywell 2050A computer systems. Each offeror was required to propose its latest state-of-the-art components within its product line. This is defined as its most recently designed components which are currently in production, marketed, available, and fully supported and which meet the RFP mandatory performance requirements. The agency proposes to reject Honeywell because it has not offered its latest state-of-the-art equipment.

Because award has not yet been made, Honeywell has requested that the exact designation of the equipment offered in its proposals not be revealed in this decision. As it appears that the rights of no interested party will be prejudiced thereby, this request will be honored and the equipment offered by Honeywell in its original proposal will be referred to as Model X. The unit which it offered in its two alternate proposals for later phase in and which consists of more recently designed 9 track units with interface adapters will be referred to as Model Y.

After Honeywell's first proposal was submitted, the IRS conducted a conference during which it expressed concern that the Model X might not be in current production as required by the RFP. Honeywell explained that while the Model X was not newly manufactured, it was remanufactured and thus was in current production. The RFP does not contain a "new Material" clause specifically prohibiting the use of used or restored, refurbished components. It states that responsive proposals will be evaluated on the basis of overall cost to the Government, all factors considered, for equipment meeting the mandatory requirements.

The record indicates that production of the Model X began in September 1970 and continued through April 1973 and that many hundreds are installed at various customer locations including those of the IRS. Honeywell states that its remanufacture of the Model X involves disassembly, repair or replacement of parts, up-dating to the most recent engineering revision status, reassembly, testing and warranting the units as new. Honeywell further states that such units are being actively marketed, fully supported and are currently available. However, Honeywell's current contract with the Federal Supply Service (FSS), General Services Administration states that Model X units are no longer in production and are provided as-available. IRS informed Honeywell that its proposal was technically unacceptable because Model X did not meet the current production requirement and Honeywell protested to this Office contending that Model X was in current production.

Subsequently Honeywell reaffirmed the acceptability of its original proposal and submitted two alternate proposals in each of which it again offered the Model X. In the first alternate, however, it proposed a guaranteed effectiveness level of 95 percent instead of the required 90 percent and agreed that if the 95 percent level was not maintained for three consecutive months, Honeywell would replace the Model X at no additional cost with the Model Y which, with adapters, would have equal or greater functional capability. The second alternate proposal offered to replace Model X units on a phased

basis with the Model Y units commencing in the 25th month of the contract. The revised proposals were rejected by the IRS on the grounds that Model X was not in current production and, in addition, did not represent Honeywell's latest state-of-the-art in its product line. Honeywell protested this rejection to this Office.

In its initial comments to this Office, IRS contended that the Model X was not in current production. In its most recent comments, the IRS concedes there is nothing in the RFP requiring only newly manufactured units and that remanufactured units of a current production model of the latest technology and meeting the functional requirements of the RFP would be acceptable.

IRS contends that because of past operational problems with its presently installed Honeywell Model X units and its expectation of using the new tape subsystem for at least five years, the primary purpose of the procurement is to improve its present capability by obtaining the latest technology available. It argues that Honeywell's alternate proposals offering to replace initially installed Model X units with Model Y units reflects Honeywell's understanding of the procurement's basic purpose. IRS contends there is a vast difference between a Model X unit representing technology ten years old which has been restored and a unit in current production and manufactured in accordance with the latest technology.

Honeywell contends that as the Model X represents the latest technology within its product line, its three proposals fully comply with all RFP requirements. It points out that the Model X was designed to operate with the Honeywell 2050A computer system and that, although the new Model Y with adapters will work with the 2050A computer system, it was not designed primarily for that computer system. Therefore, the Model X and the Model Y are considered by Honeywell to represent two different product lines and each model represents the latest technology for its respective product line. Although Honeywell states in its protest that the presently installed Model X units have performed in a most satisfactory manner, it stated in its proposals that the past

problems which the IRS had reported with the Model X "have been or are in the process of being removed" and that a survey of other users of the Model X indicated a high satisfaction level. Honeywell contends that its FSS schedule listing the Model X as no longer in production clearly means that it is no longer being newly manufactured but is being currently produced, marketed and supported.

If, as IRS concedes, remanufacturing is production and is currently taking place, it is clearly current production. Thus, the questions which must be resolved are whether the Model X represents the most recently designed and latest state-of-the-art components within Honeywell's product line and whether such requirements form a proper basis for a competitive negotiated procurement.

It is a fundamental rule of interpretation that the intent and meaning of a document are not to be determined by consideration of an isolated section or provision thereof but by consideration of the document in its entirety and each provision is to be construed in its relation to other provisions and in the light of the general purpose to be accomplished. 52 Comp. Gen. 732, 735 (1973); 46 Comp. Gen. 418 (1966). There can be little doubt as to the intent of the IRS or that Honeywell's Model X would be unacceptable to the IRS, in view of the requirement that equipment be currently in production together with the requirement for "latest state-of-the-art" and "newly designed" equipment.

The distinction which Honeywell draws between the Model X and the Model Y based upon its own organizational lines of product separation and the fact that the Model Y requires an adapter to be compatible with the IRS computers loses sight of the obvious purpose of the IRS which is clearly to obtain the latest technology in tape subsystems available from offerors. The fact that the Model Y would require an adapter to operate with the computer is of no consequence in view of the fact that most tape subsystems require an adapter to

operate with a computer made by another company and the use of such an adapter does not violate the plug-to-plug requirement. In our opinion, the IRS was not unreasonable in its judgment that the Model X was not newly designed and did not represent the latest technology within Honeywell's product line.

Honeywell has also argued the Government has a bias against Honeywell's equipments and that the rejection of Honeywell's proposal was based on "subjective" judgments,--"evaluation by emotional preference"--, contrary to the procurement statutes and regulations. Honeywell claims that the agency has not stated its minimum needs by merely requiring its latest "state-of-the-art" equipment without further definition. In this respect, Honeywell asserts that "[o]utside of the mandatory technical requirements set forth in the RFP, the IRS has not defined any additional design, functional or performance requirements which [its] equipments fail to meet." We reject these contentions.

It is a fundamental principle of competitive procurement that offerors must be treated equally and be provided a common basis for the submission of proposals. Host International, Inc., B-187529, May 17, 1977, 77-1 CPD 346. Specifications must be stated in terms that will permit the broadest field of competition within the minimum needs of the agency. 32 Comp. Gen. 384 (1953). Specifications based on preferences and desirable characteristics exceeding the agency's actual needs are generally restrictive of competition. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. However, we have also recognized the broad discretion of agencies in drafting specifications reflective of their minimum needs, and we will not disturb an agency's determination of its minimum needs unless it is clearly shown to be without reasonable basis. Science Spectrum, B-189886, January 9, 1978, 78-1 CPD 15. We think this RFP meets these tests.

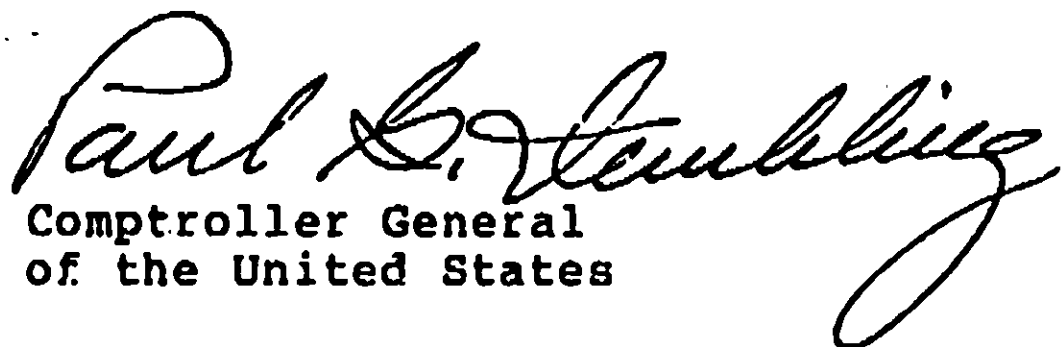
The use of the term "state-of-the-art" does, in our opinion, provide a common basis for offerors to submit proposals. The term is not so ephemeral or

mysterious as to preclude an offeror's understanding, particularly in the sophisticated electronics industry. Indeed, Honeywell's sales literature for its Model Y proclaims that the Model Y, combines proven design techniques with new state-of-the-art advances to meet the performance requirements of the seventies." (Emphasis added.) And what are these advantages? Single capstan design, claims Honeywell, flexibility in installation, certain maintenance advantages, higher tape speeds, higher data transfer rates, wider selection of packing densities, and more. These are in our view precisely the advantages IRS claims it requires when it asserts its anticipated needs for greater workload capability, data reliability, reading versatility and maintenance can be met only by a vendor's latest state-of-the-art tape drives. We believe it is not necessary under the rules of Federal procurement, for an agency to individually design its ADPE hardware or to state with absolute precision all of those performance requirements it anticipates will be required, so long as it is able to describe in terms commonly understood by the industry the type and quality of equipment it reasonably believes it requires to accomplish its missions.

In this respect, although it may be argued that the solicitation requirement that each offeror propose only its latest "state-of-the-art" equipment could result in differing levels of technology being offered by various parties resulting in an unequal technological baseline, this record does not support a finding that this occurred. There is no evidence to show that either Honeywell or its competitors' latest "state-of-the-art" equipments are so technologically advanced as to preclude competition on a materially similar baseline. Moreover, the contracting officer states that any equipment which would not increase the productive capability of the IRS beyond its present level would be unacceptable. Thus no offeror appears to have been prejudiced since all would be proceeding on essentially the same basis. Although the state-of-the-art standard perhaps should have been more broadly drawn (an industry standard, for

example), Honeywell has not shown that it was unfairly denied an opportunity to submit a competitive proposal. In particular, Honeywell was not prejudiced by this requirement since it was told its Model X was unacceptable and was afforded the opportunity to amend its proposal to meet the agency's needs. Prejudice is an essential element of a viable protest and this Office will not disturb the procurement process merely because some technical deficiency in the process may arguably have occurred. 51 Comp. Gen. 678 (1972); Cf. Data 100 Corporation, B-185884, October 21, 1976, 76-2 CPD 354 (where we held if a procurement deficiency did not unfairly deprive a protester of a contract award we would not disturb an on-going procurement).

The protest is denied.


Comptroller General
of the United States